

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:09-CT-3180-FL

MICHAEL LEE DOUGLAS,

Plaintiff,

v.

TRACY JOHNS, et al.,

Defendants.

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ORDER

Plaintiff filed this action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). The matter is before the court for frivolity review pursuant to 28 U.S.C. § 1915. Also before the court is plaintiff's motion to hold defendants in contempt, or in the alternative, motion for summary judgment (DE # 4). These matters are ripe for adjudication.

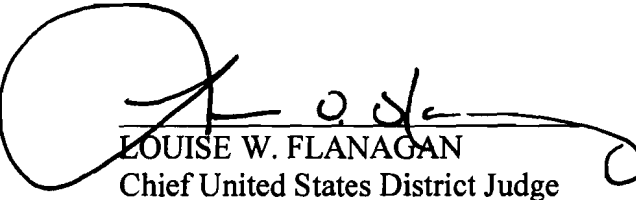
Section 1915 provides that courts shall review complaints in which prisoners seek relief from a governmental entity or officer and dismiss such complaints when they are "frivolous." 28 U.S.C. § 1915(e)(2)(B)(i). It does not clearly appear from the face of the complaint that plaintiff is not entitled to relief, thus the matter is allowed to proceed.

The court next addresses plaintiff's motion to hold defendant Warden Tracy Johns in contempt, or in the alternative, motion for summary judgment. In support of his motion, plaintiff asserts that the court issued an order, on November 5, 2009, directing the Bureau of Prisons (hereinafter "BOP") to send payments from his inmate prison account to the court in order to pay his

filing fee. Plaintiff states that the BOP has failed to comply with the court's November 5, 2009 order. The court finds that plaintiff is correct in that the BOP has not been deducting his filing fee payments from his inmate prison account. Accordingly, the court directs the Clerk of Court to re-send a copy of this court's November 5, 2009 order to the BOP. However, the court does not find it appropriate to hold defendant Warden Tracy Johns in contempt. Nor does the court find that plaintiff has provided sufficient evidence for this court to grant summary judgment for plaintiff at this time. Thus, plaintiff's motion is DENIED.

In summary, plaintiff is ALLOWED to proceed with his claim. Accordingly, the Clerk of Court is DIRECTED to issue summons for defendants. The Clerk of Court also is DIRECTED to re-send a copy of this court's order of November 5, 2009, to the BOP. Finally, plaintiff's motion to hold defendants in contempt, or in the alternative, motion for summary judgment (DE # 4) is DENIED.

SO ORDERED, this the 27<sup>th</sup> day of July, 2010.

  
LOUISE W. FLANAGAN  
Chief United States District Judge